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Electronically Filed

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ELLA DAVIS,

Plaintiff,

v.

ROBERT J. BERCIK, M.D., UNITED
STATES DEPARTMENT OF VETERANS
AFFAIRS,

Defendants.

Hon.
Civil Action No.

NOTICE OF REMOVAL

To: Superior Court of New Jersey
Mercer County Law Division
P.O. Box 8068
Trenton, NJ 08650-0068

Ella Davis
33 Pearl Street
Trenton, NJ 08609

Michelle M. Smith, Esq., Clerk
Superior Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 971
Trenton, NJ 08625

PLEASE TAKE NOTICE that this case, previously pending in the Superior Court of New Jersey, Mercer County Law Division, under Docket No. MER-L-2130-13, is hereby removed to the United States District Court for the District of New Jersey, pursuant to the provisions of 28 U.S.C. §§ 1346(b) and 2679(d). Removing defendants, the United States Department of Veterans Affairs (“VA”) and Robert J. Bercik, M.D., by and through their attorney, Paul J. Fishman, United States Attorney for the District of New Jersey (Valorie D. Smith, Assistant United States Attorney, appearing), respectfully state that upon information and belief the grounds for this removal are:

1. On or about March 31, 2014, Dr. Bercik was personally served with copies of the attached summons and complaint. A copy of all of the pleadings and related documents served upon Dr. Bercik and filed of record with the Superior Court of New Jersey are attached hereto as Exhibit A. Plaintiff initiated this action on October 3, 2013, in the Superior Court of New Jersey, Mercer County Law Division, under Docket No. MER-L-2130-13. *See* Exhibit A.

2. Plaintiff brings this action against defendants based on allegations of a medical malpractice tort. *Id.* Plaintiff’s complaint fails to state a basis for jurisdiction; however, the allegations sound in tort.

3. At the time of the events giving rise to this complaint, Dr. Bercik was an employee of the VA working within the scope of his federal employment. The Certification of Scope of Employment, attached hereto as Exhibit B, establishes that Dr. Bercik was acting within the scope of federal employment at the time and on the dates in question.

4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-80 is the exclusive remedy for torts allegedly committed by federal employees acting within the scope of

their employment. Pursuant to the FTCA, the only proper defendant in an action such as this is the United States of America. 28 U.S.C. § 2679. Therefore, this action must be deemed an action against the United States of America.

5. The United States District Court for the District of New Jersey has original and exclusive jurisdiction over this controversy. 28 U.S.C. § 1346(b). The New Jersey Superior Court lacks jurisdiction over the United States of America in this context.

6. Plaintiff has failed to serve process upon the United States Attorney's Office for the District of New Jersey or the United States Attorney General in Washington, D.C. as required by Rule 4(i) of the Federal Rules of Civil Procedure.

7. To date, the United States is unaware of any proceedings having taken place in Superior Court, Mercer County.

8. Consequently, removal of the action to this Court pursuant to the provisions of 28 U.S.C. § 2679(d)(2) is appropriate.

WHEREFORE, this matter now pending in the Superior Court of New Jersey, Mercer County Law Division, under Docket No. MER-L-2130-13 is hereby removed to this Court.

Dated: April 30, 2014

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: /s/ Valorie D. Smith
VALORIE D. SMITH
Assistant U.S. Attorney